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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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No. 877

NORMAN J. SANFORD,

Petitioner,

vs.

TOM SMITH, SUPERINTENDENT, WASHINGTON STATE
PENITENTIARY

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WASHING-
TON.

HOWARD E. FOSTER,
Counsel for Petitioner.

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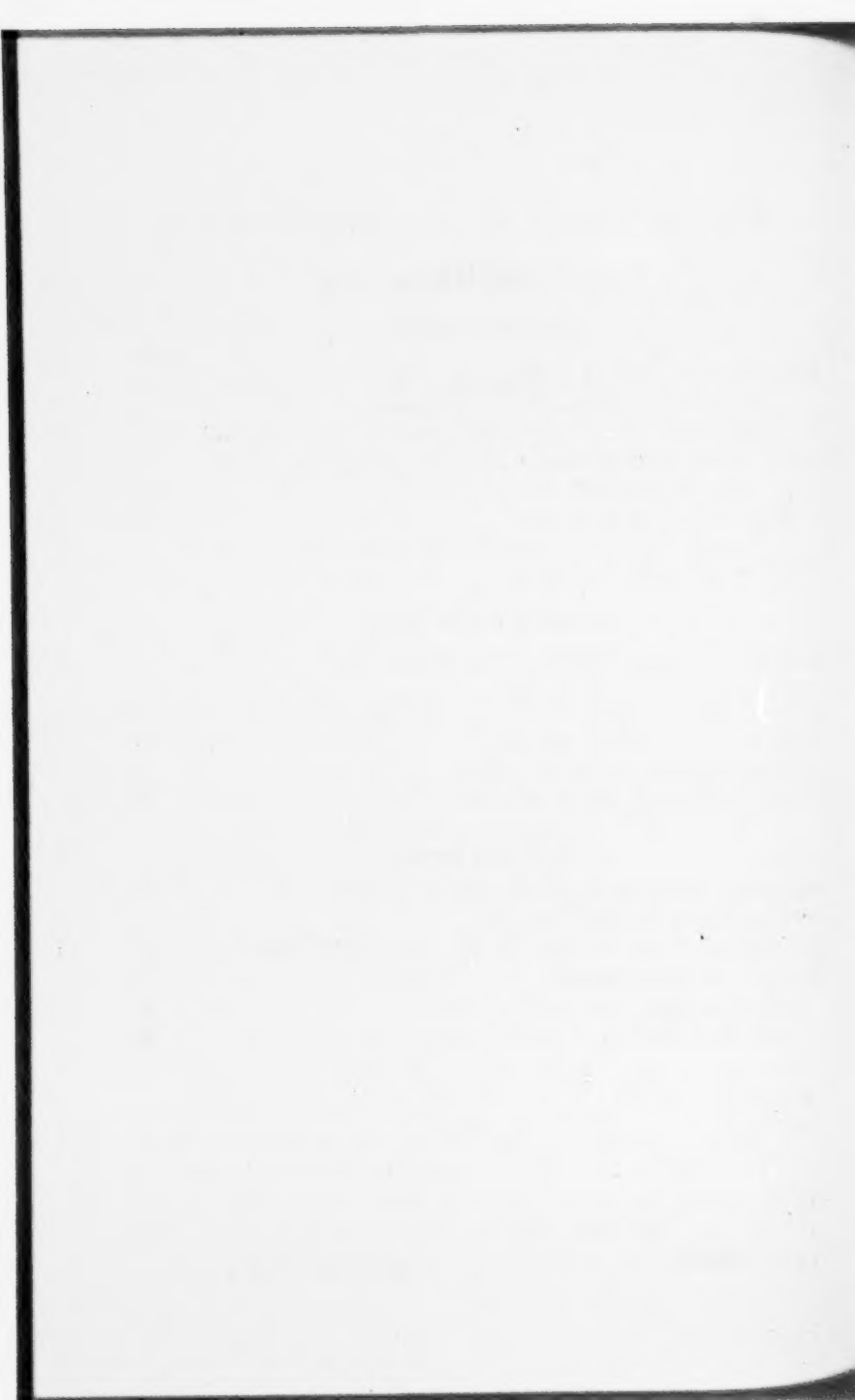
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**PETITION FOR A WRIT OF CERTIORARI TO THE
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TON.**

Now comes the petitioner, Norman J. Sanford, and represents to the Court and advises the Court, as follows, to-wit:

That the petitioner seeks a writ of certiorari to review the judgment of the Supreme Court of the State of Washington of date December 17th, 1945 (R. 16), which affirmed a judgment of the Superior Court of the State of Washington for Pierce County in said State and dated April 10, 1945 (R. 13), denying the petitioner's release from the Washington State Penitentiary on a writ of *habeas corpus* (R. 13). On appeal from the decision of the nisi prius court, the Supreme Court filed an opinion on November 15, 1945, affirming the judgment of the nisi prius court denying the petition of the petitioner for a writ of

habeas corpus (R. 14). The judgment of the Supreme Court has not been reported, but the same is of record, and can be found in Vol. 124, No. 3, page 126 of the advanced sheets of the said Court of last resort of said State.

Jurisdiction of the Supreme Court

This Court has jurisdiction to review the judgment of the Supreme Court of the State of Washington, under favor of Sec. 240(a) of the Judicial Code and the Rules of Practice and Procedure as promulgated by this Court.

Summary and Short Statement of the Matters Involved and the Reasons Relied On for the Allowance of the Writ.

During February, 1938, the petitioner was charged in Grant County with the crime of Burglary in the 2nd degree—with intent to commit larceny—breaking and entering the warehouse of the Standard Oil Company, located in Ephrata, Washington, where property was kept for sale. There is no showing where Ephrata, Washington, is; there is no showing what the Standard Oil Company of California is (R. 3-4). The judgment of sentence deraigns no location, of, how or where the crime of burglary was or could be committed (R. 2-3). The judgment sentences the petitioner to the penal institution for a term of not more than fifteen years (R. 2-3). In February, 1945, the petitioner filed his petition in the Supreme Court of the State of Washington, seeking his release on *habeas corpus*. The proceeding was sent to the Superior Court of Pierce County, Washington for hearing. The petition alleged unlawful confinement in the said penal institution. The nisi prius court denied the petition and on appeal, the State Supreme Court affirmed the judgment of the nisi prius court (R. 16). It

is contended the information is void; that the judgment lacks definiteness, and does not recite jurisdictional facts, showing the Court had jurisdiction.

Specification of Errors

One—The Supreme Court of Washington erred in affirming the judgment of the trial court, and erred in denying the release of the petitioner, and in holding the court had jurisdiction in a criminal case when the information did not state an offense, and in holding a judgment entered did not have to contain facts showing the court had jurisdiction to enter the particular judgment complained of.

Two—The Supreme Court of Washington erred in holding the ownership of the building entered, and in holding that a fictitious name is sufficient. In holding it was not necessary to deraign the county in which a town is located.

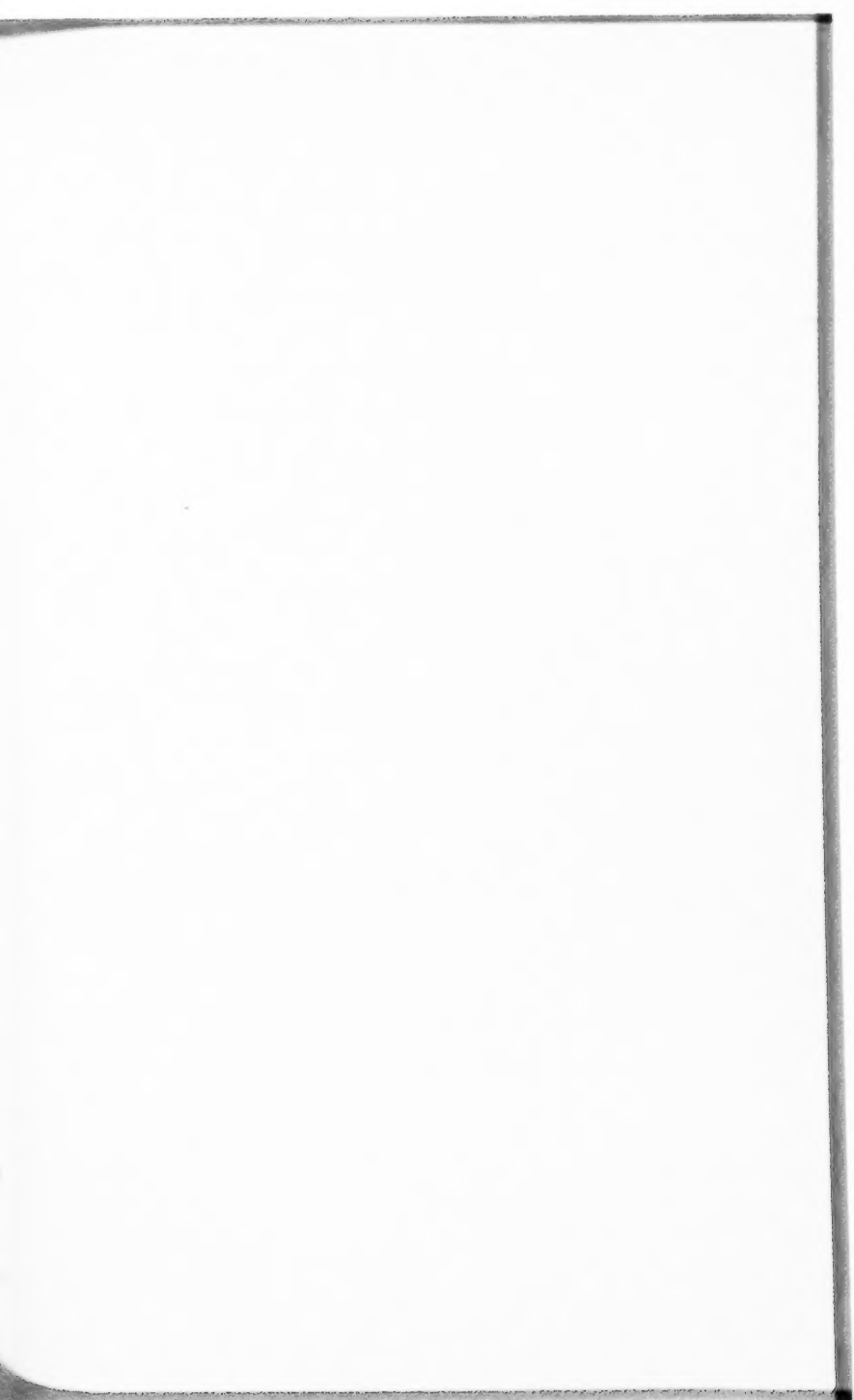
Reasons Relied On for Granting Certiorari

The record shows petitioner was charged in the Superior Court of Grant County, Washington, with the crime of burglary in the second degree, committed on or about February 14th, 1938, by breaking and entering the warehouse of the Standard Oil Company, of California, located in Ephrata, Washington (R. 3-4). There is no intimation where Ephrata, Washington is; that is to say, what county in the State. There is no intimation what the Standard Oil Company of California is; whether a corporation, or a partnership, and no attempt is made to deraign its legal status. The petitioner may have had a right to enter the building of a fictitious or non-material person. Three things must appear on the record before a judgment in a criminal case is immune from collateral attack: The court must have had jurisdiction of the party charged;

jurisdiction of the subject matter charged; and authority to enter the particular judgment so entered. If any one of the three does not exist, *habeas corpus*, it is claimed, is the proper remedy. An information that is open to a successful attack by demurrer, or after verdict, a motion in arrest, the judgment so entered is void. When a judgment lacks the requisites, it is void.

NORMAN J. SANFORD,
Petitioner,

By HOWARD E. FOSTER,
Attorney for Petitioner.





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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The information upon which the judgment of conviction of burglary rests is wholly defective; the judgment does not satisfy the statute of the State. Sec. 404 of the Statutes of Washington defines a judgment. The judgment fails to locate the county in which it is charged the crime was committed; this is fatal. The information does not deraign what is meant by the Standard Oil Company of California. This oil company is not a person. What is it? Is it something that can own property? If it is a corporation, foreign or domestic, such allegations should appear before evidence could properly be admitted. A court can not take judicial notice a town is in any particular county. A court takes judicial notice of the sub-divisions of a State, as the same are established by one branch of the State government;

cities and towns are not. It is contended the information does not charge a crime.

The Supreme Court of Missouri has had this question before that court on numerous occasions, and it has been the uniform holding of that court that such information is fatally defective.

State v. James, 92 Southwestern, 679;

State v. Horned, 76 Southwestern, 953;

State v. Clark, 122 Southwestern, 665;

State v. Simpson, 295 Southwestern, 739;

State v. Schultz, 295 Southwestern, 535.

The judgment of sentence does not pretend to adjudicate a locality, a county, or the ownership of any property, or other essentials of a charging information.

When a judgment lacks the requisites, it is void.

12 R. C. L. 1196-7-8.

The contents of an information are provided for under favor of Sec. 2057 of the Statutes of Washington.

The ownership of the building must be alleged in the information, or it will be fatally defective.

9 Am. Jur. page 263.

Habeas corpus lies where a judgment or sentence is fatally defective on the face of the record, as where it lacks the requisite definiteness and certainty—

75 Utah 245; 76 A. L. R. 460.

The judgment of sentence is uncertain; it fixes a maximum term, but no minimum. Who fixes that? A judgment is a final determination under the statute—404 of the Statute of Washington.

WHEREFORE, petitioner most respectfully prays that a writ of certiorari issue herein, and to the Supreme Court

of the State of Washington directed, commanding that court to certify and send to this Court for its review and determination on a day certain therein named the full and complete transcript of the record and all proceedings in this cause, and that the judgment and decision of the Supreme Court of the State of Washington may be reversed, and that your petitioner may be discharged from custody, and for such other and further relief as may be proper.

NORMAN J. SANFORD,
Petitioner,
By HOWARD E. FOSTER,
Attorney for Petitioner.

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